

ARTICLE XXX
MISCELLANEOUS

30.0 Miscellaneous.

30.1 Authorization.

30.1.1 Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin) is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

30.1.2 AT&T Communications of Wisconsin, Inc. is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. AT&T represents and warrants to SBC-AMERITECH that it has been certified as an LEC by the Commission and is authorized to provide in the State of Wisconsin the services it has contracted to provide herein.

30.2 Designation of Affiliate. Each Party may without the consent of the other Party fulfill its obligations under this Agreement by itself or may cause its Affiliates to take some or all of such actions to fulfill such obligations. Upon such designation, the Affiliate shall become a primary obligor hereunder with respect to the delegated matter, but such designation shall not relieve the designating Party of its obligations as primary obligor hereunder. Any Party which elects to perform its obligations through an Affiliate shall cause its Affiliate to take all action necessary for the performance hereunder of such Party's obligations. Each Party represents and warrants that if an obligation under this Agreement is to be performed by an Affiliate, such Party has the authority to cause such Affiliate to perform such obligation and such Affiliate will have the resources required to accomplish the delegated performance.

30.3 Subcontracting. Either Party may subcontract the performance of its obligation under this Agreement without the prior written consent of the other Party; provided, however, that the Party subcontracting such obligation shall remain fully responsible for the performance of such obligation and be solely responsible for payments due its subcontractors. No contract, subcontract or other agreement entered into by either Party with any third party in connection with the provision of Interconnection, Resale Services, Network Elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. Any subcontractor that gains access to CPNI or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

30.4 Independent Contractor. Each Party shall perform services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Parties. Each Party and each Party's contractor shall be solely responsible for the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to their employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

30.5 Force Majeure. Except as otherwise specifically provided in this Agreement, no Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from acts or occurrences beyond the reasonable control of such Party, including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any government or legal body, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failures, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a **"Force Majeure Event"**) or delays caused by the other Party or any other circumstances beyond the Party's reasonable control. If a Force Majeure Event shall occur, the Party affected shall give prompt notice to the other Party of such Force Majeure Event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease. Notwithstanding the preceding, no delay or other failure to perform shall be excused pursuant to this **Section 30.5**: (i) by the acts or omission of a Party's subcontractors, materialmen, suppliers or other third persons providing products or services to such Party unless such acts or omissions are themselves the product of a Force Majeure Event, and unless such delay or failure and the consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform, or (ii) if such Party fails to implement any steps taken to mitigate the effects of a Force Majeure Event (e.g., disaster recovery plans) in a nondiscriminatory manner during the period performance is impaired.

30.6 Governing Law. Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules, and Regulations and orders interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, Resale Services, Network Elements,

functions, facilities, products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. The Parties submit to personal jurisdiction in Chicago, Illinois and Madison and Milwaukee, Wisconsin.

30.7 Taxes.

30.7.1 Each Party purchasing Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter “**Tax**”) imposed on, or with respect to, the Interconnection, Resale Services, Network Elements provided on an unbundled basis, functions, facilities, products and services under this Agreement provided by or to such Party, except for: (a) any Tax on either party’s corporate existence, status, or income, or (b) any corporate franchise Taxes. Whenever possible, these Taxes shall be billed as a separate item on the invoice.

30.7.2 With respect to any purchase of Interconnection, Resale Services, Network Elements on an unbundled basis, functions, facilities, products and services under this Agreement if any Tax is required or permitted by applicable law and tariffs to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax, (ii) the purchasing Party shall remit such Tax to the providing Party, and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. The following provisions govern the backbilling of Taxes by the providing Party:

30.7.2.1 Taxes for which the purchasing Party is liable. With respect to Taxes for which the purchasing Party is liable, the providing Party shall use reasonable best efforts to bill the purchasing Party for such Tax simultaneously with the bill for service to which the Tax relates; however, the purchasing Party shall remain responsible for such Tax for the applicable statute of limitations period.

30.7.2.2 Taxes for which the providing Party is liable. With respect to Taxes for which the providing Party is liable, the providing Party may backbill the purchasing Party for any surcharges based on such Taxes and permitted by Applicable Law, subject to the same time limits that apply to the services to which the Taxes relate, as set forth in **Article 27.2.3**.

30.7.2.3 Notwithstanding **Section 30.7.2.2** above, if as a result of a notice of proposed adjustment by a taxing authority, the taxing authority imposes a Tax on the providing party, the providing party may back bill the Tax to the purchasing party for a period, not to exceed four (4) years from the date of the notice of proposed adjustment. In order for the providing party to be permitted to backbill a tax under this section, the purchasing party must be notified of the audit determination from which the surcharge results, within thirty (30) days of the notice of proposed adjustment but in no event less than ten days before the last day, under applicable law, for the purchasing party to exercise any rights it might have to contest the notice of proposed adjustment.

30.7.3 With respect to any purchase hereunder of Interconnection, Resale Services, Network Elements on an unbundled basis, functions, facilities, products and services under this Agreement that are resold to a third party, if any Tax is imposed by applicable law as reflected in appropriate tariff(s) on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User, and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.

30.7.4 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax to the extent provided in **Section 30.7.2** and all Subsections thereunder, and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.

30.7.5 If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.

30.7.6 If either Party is audited by a taxing authority or other governmental entity, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

30.7.7 To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If applicable law as reflected in appropriate tariff(s) excludes or exempts a purchase of Interconnection, Resale Services, Network Elements on an unbundled basis, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party: (a) furnishes the

providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the applicable law that both allows such exemption and does not require an exemption certificate, and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.

30.7.8 With respect to any Tax or Tax controversy covered by this **Section 30.7**, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to applicable law and as reflected in appropriate tariff(s) and at its own expense, any a Tax that it previously billed, or was billed that it is ultimately obligated to pay. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.

30.7.9 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this **Section 30.7** shall be sent in accordance with **Section 30.10** hereof.

30.8 Non-Assignment. Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third person without the prior written consent of the other Party; provided that each Party may assign or transfer this Agreement to an Affiliate in accordance with **Section 30.2** by providing prior written notice to the other Party of such assignment or transfer; provided, further, that such assignment is not inconsistent with Applicable Law or the terms and conditions of this Agreement. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns and the assigning Party will remain liable for the performance of any assignee.

30.8.1 If SBC-AMERITECH directly or indirectly (including without limitation through a transfer of control or by operation of law) sells, exchanges, swaps, assigns, or transfers ownership or control of all or any portion of SBC-AMERITECH's telephone operations (any such transaction, a "Transfer") to any purchaser, operator or other transferee (a "Transferee"), SBC-AMERITECH must provide AT&T with at least ninety (90) calendar days prior written notice. SBC-AMERITECH shall not engage in any Transfer unless the Transferee thereof shall agree in writing (in form and substance reasonably satisfactory to AT&T), for the benefit of AT&T:

- (i) to be bound by all of SBC-AMERITECH's obligations in this Agreement with respect to the portion of SBC-AMERITECH's telephone operations so transferred (the "Transferred Operations"), including but not limited to, any

operating agreements, OSS, performance standards, or ancillary or third party arrangements relating to the provision of services under this Agreement;

- (ii) to ensure that the Transfer shall not have a material adverse impact on the operations or functionality of any of the Services provided under this Agreement to AT&T or its end users to the extent that such impact would not have been permitted under this Agreement;
- (iii) to waive any claim of rural exemption with respect to the Transferred Operations pursuant to Section 251 (f) of the Act or other applicable law; and
- (iv) to engage in good faith negotiations with AT&T prior to the expiration of any interconnection agreement governing the Transferred Operations.

30.9 Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. By entering into this Agreement neither Party waives any rights granted to them pursuant to the Act.

30.10 Notices. Notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein) and unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact, shall be (a) delivered personally, (b) delivered by express delivery service, (c) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested or (d) delivered by facsimile; provided that a confirmation copy is sent by the method described in (a), (b) or (c) of this **Section 30.10**, to the following addresses of the Parties:

To AT&T:

AT&T
222 West Adams Street, 11th Floor
Chicago, Illinois 60606
Attn.: Kathryn Massura, District Manager – Interconnection Agreements
Facsimile: (312) 230-8100

with a copy to:

AT&T
222 West Adams Street, 15th Floor
Chicago, Illinois 60606
Attn.: Michael W. Tye, Vice President - Law & Government Affairs
Facsimile: (312) 230-8835

To SBC/Ameritech:

Contract Administration
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four Bell Plaza
Dallas, TX 75202-5398
Telephone No: 214-464-1933
Facsimile No: 214-464-2006

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of: (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, (iii) five (5) days after mailing in the case of first class or certified U.S. mail, or (iv) with respect to facsimile, on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.

30.11 Publicity and Use of Trademarks or Service Marks. Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent except as permitted by Applicable Law.

30.12 Intellectual Property.

30.12.1 AT&T acknowledges that its right under this Agreement to interconnect with SBC-AMERITECH's network and to unbundle and/or combine SBC-AMERITECH's network elements (including combining with AT&T's network elements) may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of third parties.

30.12.1.1 SBC-AMERITECH agrees to use its best efforts to obtain for AT&T, under commercially reasonable terms, Intellectual Property rights to each unbundled network element necessary for AT&T to use such unbundled network element in the same manner as SBC-AMERITECH.

30.12.1.2 SBC-AMERITECH shall have no obligation to attempt to obtain for AT&T any Intellectual Property right(s) that would permit AT&T to use any unbundled network element in a different manner than used by SBC-AMERITECH.

30.12.1.3 To the extent not prohibited by a contract with the vendor of the network element sought by AT&T that contains Intellectual Property licenses, SBC-AMERITECH shall reveal to AT&T the name of the vendor, the Intellectual Property rights licensed to SBC-AMERITECH under the vendor contract and the terms of the contract (excluding cost terms). SBC-AMERITECH shall, at AT&T's request, contact the vendor to attempt to obtain permission to reveal additional contract details to AT&T.

30.12.2 SBC-AMERITECH hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning AT&T's (or any third party's) rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such interconnection or unbundling and/or combining of network elements (including combining with AT&T's network elements) in SBC-AMERITECH's network or AT&T's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with unbundled network elements are vendor licenses and warranties and are a part of the Intellectual Property rights SBC-AMERITECH agrees in **Section 30.12.1.1** to use its best efforts to obtain.

30.12.3 SBC-AMERITECH does not and shall not indemnify, defend or hold AT&T harmless, nor be responsible for indemnifying or defending, or holding AT&T harmless, for any Claims or Damages for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to AT&T's interconnection with SBC-AMERITECH's network and unbundling and/or combining SBC-AMERITECH's network elements (including combining with AT&T's network elements) or AT&T's use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with unbundled network elements shall be vendor's indemnities and are a part of the Intellectual Property rights SBC-AMERITECH agrees in **Section 30.12.1.1** to use its best efforts to obtain.

30.12.4 AT&T hereby agrees to release, indemnify and hold SBC-AMERITECH harmless from and against all Damages arising out of, caused by, or relating to any Claim that AT&T's interconnection with SBC-AMERITECH's network, or AT&T's use of SBC-AMERITECH's network elements, or unbundling and/or combining of SBC-AMERITECH's network elements (including combining with AT&T's network elements) or AT&T's use of other functions, facilities, products or services furnished under this Agreement violates or infringes upon any third party Intellectual Property rights or constitutes a breach of contract rights of third parties. In no event shall SBC-

AMERITECH be liable for any actual or consequential damages that AT&T may suffer arising out of any such Claim.

30.12.5 All costs associated with the extension of Intellectual Property rights to AT&T pursuant to this **Section 30.12**, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing the unbundled network element to which the Intellectual Property rights relate and apportioned to all requesting carriers using that unbundled network element including SBC-AMERITECH.

30.13 Branding. Services offered by AT&T that incorporate Network Elements made available by SBC-AMERITECH to AT&T pursuant to this Agreement, and SBC-AMERITECH services that AT&T offers for resale shall, at AT&T's sole discretion, be branded exclusively as AT&T services, or otherwise, as AT&T shall determine and as may be more specifically defined elsewhere in this Agreement. AT&T shall provide the exclusive interface to AT&T Customers in connection with the marketing, offering or provision of AT&T services, except as AT&T shall otherwise specify. In those instances where AT&T requires SBC-AMERITECH personnel to interface directly with AT&T Customers, either orally in person or by telephone, or in writing, such personnel shall identify themselves as representing AT&T, and shall not identify themselves as representing SBC-AMERITECH. All forms, business cards or other business materials furnished by SBC-AMERITECH to AT&T Customers shall be subject to AT&T's prior review and approval, and shall bear no corporate name, logo, trademark or tradename other than AT&T's or such other brand or brands as AT&T shall determine. In no event shall SBC-AMERITECH personnel acting on behalf of AT&T pursuant to this Agreement provide information to AT&T customers about SBC-AMERITECH products or services.

30.14 Nonexclusive Dealings. This Agreement does not prevent either Party from providing or purchasing services to or from any other person nor, except as provided in Section 252(i) of the Act, does it obligate either Party to provide or purchase any services not specifically provided herein.

30.15 No Third Party Beneficiaries; Disclaimer of Agency. Except as may be specifically set forth in this Agreement, this Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. No Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

30.16 No License. No license under patents, copyrights or any other Intellectual Property right (other than the license to use consistent with the terms, conditions and

restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

30.17 Survival. The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement, including Articles XX, XXI, XXII, XXIII, XXV, XXVI, XXVII and XXVIII, Sections 6.5, 10.11.3, 16.15, 16.17, 28.2, 28.3, 30.7, 30.11, and 30.14 and Schedule 10.9.1.

30.18 Scope of Agreement. This Agreement is entered into pursuant to Sections 251 and 252 of the Act and describes and enables arrangements including specific Interconnection and access to unbundled Network Elements and compensation arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided in this Agreement. Except as specifically contained herein or provided by the FCC or the Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

30.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

30.20 Successor Rates. Certain of the rates, prices and charges set forth in the applicable Pricing Schedule have been established by the appropriate Commissions in cost proceedings or dockets initiated under or pursuant to the Act. If during the Term that Commission or the FCC changes a rate, price or charge in an order or docket that applies to any of the Interconnection, Resale Services, Network Elements, functions, facilities, products and services available hereunder, the Parties agree to amend this Agreement to incorporate such new rates, prices and charges, with such rates, prices and charges to be effective as of the date specified in such order or docket (including giving effect to any retroactive application, if so ordered). If either Party refuses to execute an amendment to this Agreement within sixty (60) days after the date of such order or docket, the other Party may pursue its rights under Section 28.3.

30.21 Scope of Obligations

30.21.1 Notwithstanding anything to the contrary contained herein, SBC-AMERITECH's obligations under this Agreement shall apply only to:

30.21.1.1 the specific operating area(s) or portion thereof in which SBC-AMERITECH is then deemed to be the ILEC under the Act (the "ILEC Territory"), and assets that SBC-AMERITECH owns or leases and which are used in connection with SBC-AMERITECH's provision to CLEC of any Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided or contemplated under this Agreement, the Act or any tariff or ancillary agreement referenced herein (individually and collectively, the "ILEC Assets").

30.22 Amendments and Modifications. No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. The amendment or modification shall become effective upon approval of such Amendment by the appropriate Commission, unless otherwise agreed to by the Parties.